

The Railway Labor Act

Second Edition

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III. PROTECTION OF EMPLOYEE RIGHTS TO SELF-ORGANIZATION

A. Jurisdiction

The 1934 amendments added administrative procedures to the Act, whereby the NMB determines the employees' choice of representative "in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier."²³ The courts in general have continued to recognize a private right of action to enforce the right to organize without carrier interference, as set forth in *Texas & New Orleans R.R.*²⁴ The first such case in the Supreme Court under the amended statute, *Virginian Railway v. System Federation*,²⁵ upheld the power of the courts to compel a carrier to treat with a union certified by the NMB under the procedures of Section 2, Ninth.

Subsequently, the courts generally have exercised jurisdiction over actions brought against carriers for interference with employees' rights under RLA Sections 2, Third and Fourth, during union organizing drives. These courts have held or implied that neither the NMB's powers under Section 2, Ninth, to determine the identity of the employees' representative without interference by the carrier, nor the enforcement procedures specified in Section 2, Tenth, are the exclusive means for protecting employees' rights under Section 2, Third and Fourth.²⁶

²³RLA §2, Ninth. For a discussion of the NMB's determinations on interference with employee choice during representation campaigns, see *supra* at Chapter 4, §VI.

²⁴Thus, the holding of *Texas & New Orleans R.R. v. Railway & Steamship Clerks*, 281 U.S. 548 (1930), that the Act's protections of the right of self-organization are judicially enforceable in a private suit, continues to apply after the 1934 amendments. In *Stepanischen v. Merchants Despatch Transp. Corp.*, 722 F.2d 922, 926-27, 114 LRRM 3641 (1st Cir. 1983), for example, the court observed that in adopting the 1934 amendments to the Act, Congress did not express an intent to overrule *Texas & New Orleans R.R.* or to make proceedings by the U.S. Attorneys the exclusive means for enforcing the Act.

²⁵300 U.S. 515, 1 LRRM 743 (1937).

²⁶See, e.g., *Stepanischen*, 722 F.2d at 924, 926, 114 LRRM 3641, and cases cited therein (existence of criminal penalties does not preclude enforcement by private parties); *Adams v. Federal Express Corp.*, 547 F.2d 319, 321, 94 LRRM 2008 (6th Cir. 1976) (because the RLA contains no analog to the NLRB's jurisdiction over unfair labor practices, courts must resolve interference claims under RLA),

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